Sprint

1850 M Street, N.W., 11th Floor
Washington, D.C. 20036
Telephone: (202) 828-7453

DOCKET FILE COPY ORIGINAL

Jay C. Keithley
Vice President
Law and External Affairs
United Telephone Companies

November 8, 1993

Mr. William F. Caton, Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20036

RE: In the Matter of Implementation of Section 3(n) and 332 of the Communications Act
Regulatory Treatment of Mobile Services, GN Docket No. 93-252

Dear Mr. Caton:

Attached is the original and four copies of the Comments of Sprint Corporation in the matter referenced above.

Sincerely,

Jay C. Keithley
Vice President
Law and External Affairs

Attachment

JCK/mlm

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation Of Section 3(n) and 332 of the Communications Act	)	GN Docket No. 93-252
	)	
Regulatory Treatment of Mobile Services	)	

COMMENTS OF SPRINT CORPORATION

Respectfully submitted,

SPRINT CORPORATION

Jay C. Keithley
Leon M. Kestenbaum
1850 M Street, N.W.
Suite 1100
Washington, DC 20036
(202) 857-1030

Kevin C. Gallagher
8725 Higgins Rd.
Chicago, IL 60631
(312) 399-2348

Craig T. Smith
P.O. Box 11315
Kansas City, MO 64112
(913) 624-3065

THEIR ATTORNEYS

November 8, 1993

SUMMARY

Sprint Corporation ("Sprint"), on behalf of the United and Central Telephone companies, Sprint Communications Co., and Sprint Cellular, urges the Commission to implement the Omnibus Budget Reconciliation Act of 1993 (the "Act") such that, to the fullest extent possible, similar (from the end user's perspective) services are classified the same for regulatory purposes. The Commission should refrain from creating artificial distinctions and should establish a truly level playing field for providers of Commercial Mobile Services.

"For profit" should be interpreted to include any service offering where the provider is seeking pecuniary gain. This interpretation encompasses resellers of excess capacity as well as a "for profit" managers of a group of not for profit licensees.

Additionally, if a service allows at least one entity, in addition to the service provider itself, to access the public switch network then the services should be treated as interconnected service that is available to the public.

The Commission should refrain from differential regulation of different categories of Commercial Mobile Service providers. To the extent possible, all Commercial Mobile Services providers should be regulated in a like manner.

Finally, Sprint believes the Commission should forbear from imposing most Title II obligations upon Commercial Mobile Service providers.

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Regulatory Treatment of Mobile Services	)	

COMMENTS OF SPRINT CORPORATION

Sprint Corporation ("Sprint"), on behalf of the United and Central Telephone companies,[1] Sprint Communications Co., and Sprint Cellular, hereby comments on the Commission's Notice of Proposed Rulemaking ("NPRM") in the above-captioned docket.[2]

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1. Carolina Telephone & Telegraph Co.; United Telephone - Southeast, Inc.; United Telephone Company of the Carolinas; United Telephone Company of Southcentral Kansas; United Telephone Company of Eastern Kansas; United Telephone Company of Kansas; United Telephone Company of Minnesota; United Telephone Company of Missouri; United Telephone Company of Texas, Inc.; United Telephone Company of the West; United Telephone Company of Florida; The United Telephone Company of Pennsylvania; United Telephone Company of New Jersey, Inc.; United Telephone Company of the Northwest; United Telephone Company of Ohio; United Telephone Company of Indiana, Inc.; Central Telephone Company; Central Telephone Company of Florida; Central Telephone Company of Illinois; Central Telephone Company of Virginia; and Central Telephone Company of Texas.

2. In the Matter of Implementation of Sections 3(n) and 332 of the Communications Act - Regulatory Treatment of Mobile Services, GN Docket No 93-252, Notice of Proposed Rule Making, FCC 93-454, released October 8, 1993.

I. INTRODUCTION

The Commission issued the NPRM in response to Title VI, Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993[3] (the "Act") which amends Sections 3(n) and 332 of the Communications Act to "create a comprehensive framework for the regulation of mobile radio services."[4]

The Act divides mobile services into Commercial and Private, and requires that all commercial mobile service providers be regulated as common carriers. However the Act grants discretion, if certain conditions are met, to the Commission to forbear application of certain Title II obligations to Commercial Mobile Service providers. In order to implement the requirements of the Act, the Commission seeks comment on the definitional issues raised by the Act and the appropriate regulatory classification of the various commercial mobile services. Additionally, the Commission requests comments on whether to forbear from imposing certain Title II common carrier obligations on Commercial Mobile Service providers.[5]

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3. Pub. L. No. 103-66, Title VI, §6002(b), 107 Sat. 312, 392 (1993).

4. NPRM at par. 1.

5. Id. at par. 2.

II. DEFINITIONAL ISSUES

Revised Section 332(d)(1)[6] treats mobile service as Commercial Mobile Service if the service is provided for profit and makes interconnected services available to the public or such classes of eligible users as to be effectively available to a substantial portion of the public. Interconnected service is defined in revised Section 332(d)(2) as service that is interconnected with the public switched network or a service for which an interconnection request is pending. The Commission seeks comment on the interpretation of for profit, interconnected service, and public switched network. The Commission also seeks comment on the appropriate interpretation of Private Mobile Service (non-common carrier), which is defined in revised Section 332(d)(3) as a mobile service that is not a commercial Mobile Service nor the functional equivalent of a Commercial Mobile Service.

At the outset it is important to note that any interpretations must be made in light of the raison d'etre of Title VI of the Act: the reform of the existing patchwork of mobile service regulations in favor of a comprehensive, uniform set of rules to address existing Commercial Mobile Services and such new services as Personal Communications Service ("PCS"), that will soon be available.

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6. 47 U.S.C. Section 332(d)(1) as revised by the Act. All references to revised Sections refer to Sections of Title 47 revised by the Act.

That is not to say that the existing patchwork was wrongfully created. Indeed, past goals of Congress and the Commission aimed at serving the public interest and encouraging the development of new services provided the foundation for some of the disparate regulatory treatment of various mobile services.[7] However, the Act makes it clear that those days are gone. Consequently, interpretations of the Act should be made to foster a level playing field where all similar (from an end user's perspective) for profit mobile services are regulated in the same manner.

The Commission specifically requested comment on the interpretation of "for profit." Little interpretation is needed. The fact that the Legislative History[8] did not even address this element suggests that Congress intended the term to have its

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7. See e.g., In the Matter of Parts 89, 91 and 93 of the Commission's Rules and Regulations to Adopt New Practices and Procedures for Cooperative Use and Multiple Licensing of Stations in the Private Land Mobile Radio Services, Docket No. 18921, Memorandum Opinion and Order on Reconsideration, 93 F.C.C. 2d 1127, 1133-34 (1983). The Commission sanctioned private service status for "for profit" cooperative sharing arrangements for the provision of private land mobile service. The ruling was to further Congress's intent (as expressed in the Communications Amendments Act of 1982, Section 120(a) whereby Congress altered the legal test of common carriage in the land mobile radio services arena) to foster such service by allowing classification as private even though the service was provided on a "for profit" basis.

8. H.R. Rep. No. 102-213, 103rd Cong., 1st Sess. (1993).

commonplace meaning of "pecuniary gain resulting from the employment of capital in any transaction."[9]

Accordingly, it is inconsequential whether the interconnected portion of the service is provided on a non-profit basis, where the mobile service itself is provided to customers on a for profit basis. Likewise, a licensee that operates a mobile radio system for itself, but sells its excess capacity, is operating for profit. Finally, where the individual licensees do not operate on a for profit basis, but pay a third party to manage the system for profit, this third party is providing mobile services for profit.

Sprint also believes that interconnected services must be broadly interpreted. Whether or not the end user or even the licensee, may directly control access to the public switched network for sending or receiving messages to or from points on the network is irrelevant. The focus must be on the service itself and whether use of the service provides access to the public switched network.

Neither real time access nor two-way access should be critical to the Commission's interpretation. Both of these factors are merely characteristics of different types of mobile services, but not such distinguishing characteristics as to warrant differing regulatory treatment.

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9. Webster's Encyclopedic Unabridged Dictionary of the English Language, Portland House, 1989 Ed., p. 1149.

Rather, if a mobile service provides connection to the public switched network, regardless of whether it is real-time or two-way, the service should be treated the same as any other mobile service. Creating small niches or distinguishing differences in treatment based upon inconsequential differences in how the service is provided will ultimately create a patchwork of regulatory treatment similar to that which exists today. Clearly, it was the intent of Congress to eliminate such disparate regulatory treatment.

From the end user's perspective an interconnected mobile service provides a means to communicate through the public switched network, regardless of whether a mobile service provides real-time or two-way communications. To the extent that the service is only one-way or not real-time, the value of the service may be diminished in the end user's mind and this diminished value, if any, may affect the price, terms, and conditions the end user is willing to agree to in subscribing to the service. However, it is exactly these marketplace considerations that should influence how the service is provisioned, not some regulatory artifice that creates distinctions where none are warranted.

The Commission also seeks comment on how to define "public switched network." The Commission questions whether its traditional definition of the "public switched telephone network" as the traditional local exchange and interexchange common carrier switched network is still adequate or whether Congress intended something broader.[10] The Act's requirement that all commercial mobile services providers be treated as common carriers departs significantly from the historical regulatory scheme imposed on mobile services. This clearly indicates that Congress had an expansive view of mobile services and was looking to encompass more than just the local exchange and interexchange carriers' networks. As technology and the market create an ever-expanding network of networks, the Commission's definition of the public switched network must be expanded accordingly. It is quite possible, for example, that the development of PCS services may create a wireless public switched network. The Commission's definition should be flexible enough to incorporate this likelihood.

To be available to the public and part of the public switched network, a mobile service does not need to be available to the entire universe of potential users. A service that is limited to a specialized user group, i.e. all taxi companies, should be considered available to the public because the taxi

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10. NPRM at par. 22.

companies are part of the public, albeit a limited part. However, other mobile services that are not limited just to taxi companies will need to compete for the taxi company business and the fact that one service is limited to a specific part of the public and the other is not does not justify or warrant disparate treatment.

Likewise, capacity and service territory limitations should not be relevant to a determination of what is available to the public and is part of the public switched network. A mobile service offered only in a particular locality is still public provided the service is generally available to more than one entity in that locality.[11]

Finally, the Commission seeks comment on the proper interpretation of the Act's definition of "private mobile service."[12] Revised section 332(d)(3) defines private mobile service as any mobile service that is not commercial mobile service or the functional equivalent of a commercial mobile service. The Commission states that there are two possible interpretations. The first is that a mobile service will be classified as private if it fails to meet the statutory definition of commercial or it is not the

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11. Compare the provisions of the Telephone Operator Consumer Services Improvement Act of 1990, Pub. L. 101-435 (codified at 47 U.S.C. Section 226) pursuant to which a provider that makes telephones available to the public is an aggregator even though the telephones are only provided at a specific place in only one locality.

12. NPRM at par. 28.

functional equivalent of a commercial mobile service. Under this interpretation, a service that falls within the literal statutory definition of commercial could still be considered private if the Commission determines that the service is not functionally equivalent to commercial mobile service.[13]

The second interpretation would hold that a private mobile service does not include any mobile service that meets the statutory definition of commercial mobile service or is the functional equivalent of a commercial mobile service. Under this approach, a mobile service would not be considered private, even though it does not meet the statutory definition of commercial, if the service is functionally equivalent to a commercial mobile service.[14]

Sprint believes the Commission must adopt the latter. To do otherwise would nullify Congress' addition of the functional equivalence standard to the definition of a private mobile service. The latter interpretation will require the Commission to apply uniform regulatory treatment to mobile services that are not different in any material functional manner. Private status will have to be determined on a service by service basis. Such a review is necessary to ensure that services that provide the same functionality to end users are subject to the same regulatory treatment.

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13. Id. at par. 30.

14. Id. at par. 31.

III. REGULATORY TREATMENT

The Commission notes that the Act allows, but does not require, differential regulation of different categories of commercial mobile service providers. The Commission seeks comments on whether, due to different marketplace conditions, different categories should be created and on whether regulatory treatment should vary among the categories and potentially within the categories themselves.

Sprint opposes any such categorization or differential regulatory treatment of commercial mobile service providers. A commercial mobile service is a commercial mobile service is a commercial mobile service. All commercial mobile services should receive like regulatory treatment. Artificial distinctions based on, for instance, the type or category of the provider should not be made.

This is not a situation where inconsequential differences in the marketplace should drive different regulatory treatment. Rather, if the Commission creates different regulatory treatment for different commercial mobile services, the regulatory scheme will create artificial differences in the marketplace by creating loopholes in the regulatory scheme that give certain providers an unfair advantage due to regulatory artifice.

Additionally, the Commission questions whether Personal Communications Service ("PCS") licensees should be allowed to

self-designate whether they provide commercial or private mobile service.[15] Such a self-designation process cannot be allowed. The Act defines commercial mobile and private mobile services. The Act requires that all commercial mobile services be regulated as common carriage. The Commission must, consistent with the Act, review the PCS applications. If the service applied for is for profit and provides interconnected service to the public, then it is commercial mobile service and must be regulated accordingly.

IV. FORBEARANCE

The Act, in revised section 332(c)(1)(A), grants the Commission the discretion to exempt Commercial Mobile Service providers from all Title II requirements except those contained in Sections 201, 202 and 208 of the Communications Act. Before exercising this discretion, the Commission must determine that the particular Title II requirement is not necessary to ensure that service is provided upon reasonable request and upon reasonable terms and is not unreasonably discriminatory. The Commission must also determine that the particular provision is not necessary for the protection of consumers and that forbearing enforcement of the particular provision will be in the public interest, i.e. will promote competitive market conditions.[16]

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15. NPRM at par. 46.

16. See, Revised Section 332(a)(1)(c).

Sprint believes the conditions are ripe for forbearing from enforcement, against all Commercial Mobile Service providers, of the obligations contained in Sections 203 (tariff filing), 204 (suspension and investigation of tariffs), 205 (prescription of charges), 211 (filing contracts), and 214 (authorization of service) of the Communications Act.

Historically, cellular service providers have not been subject to tariff filing obligations or other Title II obligations by the Commission. Additionally, the Commission has never determined cellular service providers' regulatory status. However, it is apparent from the Act that Congress did not intend for all cellular service providers to be subject to the full panoply of Title II regulation. The Commission should not frustrate this intent.

Furthermore, the advent of PCS holds the promise that competition in wireless services will increase such that the marketplace will adequately protect consumers from unreasonable or discriminatory treatment. It is premature, Sprint believes, to subject PCS to full Title II regulation. Accordingly, the Commission should forbear from enforcing the above referenced Title II obligations against any PCS providers.

The Commission also tentatively concluded that it should forbear from enforcing, against any Commercial Mobile Service provider, the following additional Title II obligations: Section 210 (Franks and Passes); Section 212 (Interlocking Directorates);

Section 213 (Valuation of Carrier Property); Section 218 (Inquiries Into Management); Section 219 (Annual and Other Reports); Section 220 (Accounts, Records, and Depreciation Charges); and Section 221 (Special Provisions Relating to Telephone Companies.) Sprint agrees with the Commission's tentative conclusion with regard to these obligations.

However, the Commission tentatively concluded that it should not forbear from enforcing Section 201 (Liability of Carriers for Damages), Section 207 (Recovery of Damages, Section 209 (Orders for Payment of Money), Section 216 (Application of Act to Receiver and Trustees), and Section 217 (Liability of Carrier for Acts and Omissions of Agents). Sprint agrees with the Commission that these Title II obligation should be enforced against all Commercial Mobile Service providers.

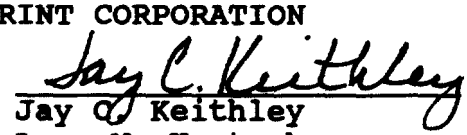
The Commission also sought comment on whether it should forbear from enforcing Section 223 (Obscene or Harassing Telephone Calls), Section 225 (Telecommunications Services for Hearing-Impaired and Speech-Impaired Individuals), Section 226 (Telephone Operator Services (TOCSIA), Section 227 (Restrictions on the Use of Autodialers and Telemarketers), and Section 28 (Regulation of Pay-Per-Call Services.) Sprint believes that these Title II obligations should be enforced.

V. CONCLUSION

The Act presents a unique opportunity to craft a new regulatory model for the growing and increasingly important area of Commercial Mobile Services. With this opportunity, the Commission can and should seek to eliminate any existing rules that are unnecessary or that create artificial and arbitrary barriers to true competition where the demands of the marketplace, not regulatory fiat, will drive the provision of mobile services. Accordingly, it is incumbent upon the Commission to implement a regulatory scheme, consistent with the dictates of the Act, that provides like regulation for like services.

Respectfully submitted,

SPRINT CORPORATION

By 
Jay C. Keithley
Leon M. Kestenbaum
1850 M Street, N.W.
Suite 1100
Washington, DC 20036
(202) 857-1030

Kevin C. Gallagher
8725 Higgins Road
Chicago, IL 60631
(312) 399-2348

Craig T. Smith
P.O. Box 11315
Kansas City, MO 64112
(913) 624-3065

THEIR ATTORNEYS

November 8, 1993

CERTIFICATE OF SERVICE

I, Melinda L. Mills, hereby certify that I have on this 8th day of November, 1993, sent via U.S. First Class Mail, postage prepaid, or Hand Delivery, a copy of the foregoing "Comments of Sprint Corporation" in the Matter of Implementation of Section 3(n) and 332 of the Communications Act Regulatory Treatment of Mobile Services GN Docket No. 93-252 filed this date with the Acting Secretary, Federal Communications Commission, to the persons listed on the attached service list.

Melinda L. Mills

Kathleen Levitz, Acting Chief*
Common Carrier Bureau
Federal Communications Commission
1919 M Street, NW, Room 500
Washington, DC 20554

Greg Vogt, Chief*
Tariff Division
Federal Communications Commission
1919 M Street, NW, Room 518
Washington, DC 20554

ITS*
1919 M Street, NW, Room 246
Washington, DC 20554

Joel Ader*
Bellcore
2101 L Street, NW, 6th Floor
Washington, DC 20037